rection in Mexico had assumed to confiscate the debt. The Obregon party, though subsequently acquiring control of Mexico, had not been recognized by the United States at the time of the decision. The court properly interpreted the confiscation as merely a seizure of the debtor's money, and not a proper proceeding in the nature of garnishment. The striking thing about such a case is that a judgment against a debtor where the creditor has had no opportunity to be heard (and thus in effect the same as this act of attempted confiscation by the insurgent leaders), if rendered by a state court in the United States, would be upheld by the Supreme Court as a valid proceeding in garnishment.[21]

THE CONFLICT OF LAWS RELATING TO THE CREATION OF COVENANTS FOR TITLE. — When persons domiciled in one state execute in that state a deed whereby one of them purports to transfer to the other title to land situated in another state, the law of the *situs* determines what interests in the land, if any, are created thereby.[1] If by the law of the *situs* the words used in the conveyance import the usual covenants for title, will that law still control, or should the courts look to the law of the place where the deed was made, or to that of the domicil of the grantor? A recent California case,[2] in deciding this question, held that as to a covenant for quiet enjoyment the *lex rei sitæ* governed.

Since no other sovereign than that of the *situs* can exercise dominion over the land, that sovereign must have power to impose whatever requirements it may deem necessary as conditions precedent to the acquisition and transfer of title or any other rights therein. But, on the other hand, the law of the *situs* can have no extraterritorial effect and therefore "cannot control personal covenants, not purporting to be conveyances, between persons outside the jurisdiction, although concerning a thing within it." [3] If a man is held to have made a promise, it must be either because the law treats the mere doing of an act as such, or because he has used promissory words. The act of making a deed may have two effects: first, to create an interest in the land, and, second, to create a personal obligation on the part of the grantor. Whether a deed does have the latter effect should be determined by

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fendants in Texas on the certificate of deposit, and recovered. *Held*, that the judgment for the plaintiff be affirmed.

[21] See Note 12, *supra*.

[1] New Haven Trust Co. *v.* Camp, 81 Conn. 539, 71 Atl. 788 (1909); Middleton's Trustee *v.* Middleton, 172 Ky. 826, 189 S. W. 1133 (1916); International Paper Co. *v.* Bellows Falls Canal Co., 91 Vt. 350, 100 Atl. 684 (1917).

[2] Platner *v.* Vincent, 202 Pac. 655 (Cal., 1921). — The defendant, by a deed made in California, conveyed to the plaintiff land situated in Washington. By the law of Washington a deed containing the words "grant, bargain, sell, and convey" imports an express covenant of quiet enjoyment. (1915 REM. CODE, § 8748). The plaintiff, having been prevented from taking possession because of the superior right of third parties, sued in California, alleging a breach of this covenant. The defendant's demurrer, on the ground that no cause of action was shown by the law of California, was sustained. *Held*, that the judgment be reversed.

[3] *Per* Holmes, J., in Polson *v.* Stewart, 167 Mass. 211, 214, 45 N. E. 737, 738 (1897). See also Robinson *v.* Suburban Brick Co., 127 Fed. 804 (4th Circ., 1904); Clement *v.* Willett, 105 Minn. 267, 117 N. W. 491 (1908).

the *lex loci contractus*.[4] That law alone can attach an obligation to the act of making. Whether the words are to be interpreted as promissory should depend on the law of the grantor's domicil.[5] If certain words are susceptible of more than one construction, the grantor must have intended to use them according to their meaning in the language he is accustomed to speak, — that of his home.

When the problem is to determine what covenants for title are to be read into a deed, do any further considerations enter? Technically all such covenants run with the land until breach.[6] But in the United States the somewhat anomalous doctrine exists generally that the covenants of seisin, of right to convey, and against encumbrances, are broken, if at all, as soon as made, and do not in fact run with the land.[7] The covenants of warranty and of quiet enjoyment, however, run in fact as well as in theory.[8] Since only the covenantee, in the case of covenants which do not run, can take advantage of a breach,[9] the courts concede that they are personal between the original parties, and that to ascertain whether they have been created it is necessary to refer to the *lex loci contractus*.[10] But by the weight of authority, the law of the *situs* determines whether or not covenants running have been created.[11] Is there any sound basis for this distinction?

Two questions arise in every case: first, Is there a promise? and second, Is there an obligation attached to it? The courts which apply the *lex rei sitæ* to covenants which in fact run with the land seem to deal, and erroneously, with the latter only. The reasoning of the cases usually is that there is something in the nature of these covenants so inseparably connected with the land itself that they cannot be disassociated therefrom. They can be transferred only with the land, they inure to the benefit of a subsequent assignee solely because of his privity of estate, and are, therefore, not strictly "personal" as between the covenantor and him.[12] But the fact seems to be overlooked that they do

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[4] See Blackwell *v.* Webster, 23 Blatch. 537 (2nd Circ., 1886); Kennedy *v.* Cochrane, 65 Me. 594 (1876); Baldwin *v.* Gray, 4 Mart. N. S. (La.) 192 (1826).

[5] Knights Templars, etc. Aid Assoc. *v.* Greene, 79 Fed. 461 (Circ. Ct., S. D. Ohio, 1897); London Assurance *v.* Companhia de Moagens, 167 U. S. 149 (1897). See Staigg *v.* Atkinson, 144 Mass. 564, 12 N. E. 354 (1887); McGahan *v.* Baylor, 32 Tex. 789 (1870); Cood *v.* Cood, 33 L. J. Ch. 273 (1863).

[6] See RAWLE, COVENANTS, 5 ed., § 204.

[7] Greenby *v.* Wilcocks, 2 Johns. (N. Y.) 1 (1806); Reinhalter *v.* Hutchins, 26 R. I. 586, 60 Atl. 234 (1904); Thompson *v.* Richmond, 102 Me. 335, 66 Atl. 649 (1906); Faller *v.* Davis, 30 Okla. 56, 118 Pac. 382 (1911). See Peters *v.* Bowman, 98 U. S. 56 (1878).

[8] Butler *v.* Barnes, 60 Conn. 170, 21 Atl. 419 (1891); Arnold *v.* Joines, 50 Okla. 4, 150 Pac. 130 (1915). See RAWLE, *op. cit.*, §§ 131, 213.

[9] See RAWLE, *op. cit.*, § 204.

[10] Bethell *v.* Bethell, 54 Ind. 428 (1876); Jackson *v.* Green, 112 Ind. 341, 14 N. E. 89 (1887).

[11] Lyndon Lumber Co. *v.* Sawyer, 135 Wis. 525, 116 N. W. 255 (1908); Dalton *v.* Taliaferro, 101 Ill. App. 592 (1902); Fisher *v.* Parry, 68 Ind. 465 (1879). See Beauchamp *v.* Bertig, 90 Ark. 351, 119 S. W. 75 (1909); Ellis *v.* Abbott, 69 Ore. 234, 138 Pac. 488 (1914); Newsom *v.* Langford, 174 S. W. 1036, 1040 (Tex. Civ. App., 1915). In the last case the alleged covenantor was domiciled at the *situs*, but the *dictum* of the court is sweeping. See also 1 WHARTON, CONFLICT OF LAWS, 3 ed., § 276d; MINOR, CONFLICT OF LAWS, § 185.

[12] See Dalton *v.* Taliaferro, *supra*, at 595, 596; 4 KENT, COMM. 472, note a.

not give the grantee any interest in the land itself. They are rather in the nature of promises to indemnify him or his assignees in the event of his being injured by eviction or by being compelled to pay off an existing undisclosed encumbrance. In the case of covenants which run as well as in the case of those which do not, the injured party's right against the covenantor at law is solely to recover damages for the breach of the promise.[13] In either instance the grantee acquires no more than a personal right based on a contract in relation to the land, which in one case inures to the benefit of third persons. Though the effect of any covenant, which is found to have been made, may properly be held to depend on the law of the *situs*,[14] that law should not be able to impose on a man a personal promise he did not intend to make.[15] The result of making a distinction between the two types of covenants might be that if a covenantee sued on the breach of covenants of seisin and of warranty, alleged to be contained in the same deed, the deed would have to be interpreted as to the existence of one covenant by the *lex loci contractus* [16] and as to the other by the *lex rei sitæ*. There can be no sound basis to such an incongruous conclusion. Since all covenants for title are promises, the better rule would seem to be that to determine whether or not one is created [17] by the mere making of a deed the courts should uniformly look to the law of the place where that act was done.

Nevertheless, only one decision has been found sustaining this conclusion.[18] It is not impossible, however, that in jurisdictions where the question is still an open one the carefully considered opinion of that

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[13] See RAWLE, *op. cit.*, § 354.

[14] When the deed is found to contain a covenant, it is necessary to refer to the law of the *situs* to determine whether or not it runs with the land. Riley *v.* Burroughs, 41 Neb. 296, 59 N. W. 929 (1894); Succession of Cassidy, 40 La. Ann. 827, 5 So. 292 (1888). What amounts to a breach also depends on the *lex rei sitæ*. Kling *v.* Sejour, 4 La. Ann. 128 (1849). And so does the question whether the grantor has capacity to convey. Beauchamp *v.* Bertig, *supra*, note 12.

[15] Professor Minor, however, approves the prevailing rule "since the grantor must be presumed to be acquainted with that law [of the *situs*] as well as his own, and to hold otherwise would tend to make title to the land uncertain." MINOR, *op. cit.*, § 185. But the effect of such a presumption, which in most cases would be contrary to fact, is to impose a personal obligation on the grantor irrespective of his intent. It is true that the obligation imposed by the *lex loci contractus* may also be contrary to his intent, but by doing an act subject to that law he has submitted to whatever consequences it may attach to the act, whereas he has done no act whatsoever at the *situs*.

[16] Or the *lex domicilii*, as the case may be. See notes 5 and 6, *supra*.

[17] But if a covenant of warranty is sought to be used to establish a title by estoppel, — to create an interest in the land itself, — the law of the *situs* must control. Smith *v.* Ingram, 132 N. C. 959, 44 S. E. 643 (1903).

[18] Worley *v.* Hineman, 6 Ind. App. 240, 33 N. E. 260 (1893). In distinguishing the rule that requires all questions concerning the title of real property to be decided by the law of the *situs* from the proposition that in actions to recover damages for breach of contract the law of the state where the contract was made governs, the court said: "The reason for the distinction must be obvious. In the one case it is the interest in the thing itself that is to be determined, and in the other it is a personal right growing out of the contract made in relation to that thing." 6 Ind. App. 248, 33 N. E. 262. The court then applied the rule of Bethell *v.* Bethell, *supra*, to a covenant of warranty and declared that the later case of Fisher *v.* Parry, *supra*, had been discredited in Indiana.

case will successfully overcome the weight of the courts which have unfortunately taken the contrary view.

BOOK REVIEWS

CRIMINAL JUSTICE IN CLEVELAND. Cleveland: The Cleveland Foundation. 1922. pp. 700.

The administration of criminal justice, especially in urban communities, presents no novel problem in the United States. For many years the importance of the problem and the difficulties of its solution have been steadily growing. Volumes have been written about it. There has seldom been a time in recent years when it has not been the subject of newspaper report and public discussion in some part of the country. Innumerable movements for reform have been inaugurated and run their course. Some peculiarly atrocious crime, some notorious failure of criminal justice, some scandal in the administration of criminal law, apparently fortuitous, actually inevitable, since these manifestations are only the external symptoms of an internal disorder, stirs the public conscience to demand action and reform. The action demanded has usually been the wreaking of vengeance. Incompetent or corrupt officials must be removed or punished and new ones substituted for them, who in turn are left to cope with all the forces which rendered their predecessors incompetent or corrupt. The demand for reform has usually found expression in new legislation creating new crimes or new machinery for the administration of criminal justice or both. More police are added to the force, new courts are created, new officials established, and then having treated the symptoms without really discovering the disease the public interest turns to other matters and we drop back into the old slough of despond. This has been the traditional procedure in our efforts to reform criminal justice, and the inevitable result has led even the most stout-hearted reformers to begin to despair of progress toward a more enlightened and efficient system.

In the spring of 1920 the civic consciousness of Cleveland, the fifth largest city in the United States, was aroused by the perpetration of an atrocious crime in which one of its municipal court justices was implicated. That this dramatic event did not stir into activity the usual agitation for vengeance and quick reform is probably due to the wise leadership in the civic organizations of Cleveland, which, headed by the Cleveland Bar Association, requested the Cleveland Foundation to undertake a survey of criminal justice in that city. The survey has now been brought to a conclusion and its results are embodied in the present volume. For the first time there is presented in it a thorough, painstaking, objective study and analysis, by experts, of the elements which enter into the problem of administration of criminal law in an American city.

I suppose no one would be more prompt than the authors of this survey to disclaim any pretensions to infallibility or any assertion that the survey was free from all error in its choice of particular subjects for investigation or in its conclusions. They had a difficult task to perform even had its precise limits been previously marked out, but in addition they had to blaze a new path in an unknown wilderness of social experiment. Yet seldom does one have the privilege of reading any study which is on its face more dispassionate or impartial or which bears such conclusive internal evidence that it has been made with exceptional skill and thorough integrity.

But more important than the complete verity of its data and conclusions is the fact that this survey presents in concrete and readable form a new approach to the problems of the reform of criminal justice in urban America. In this